

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

No. 6:21-cv-00243

Barry Emmett,
Plaintiff,

v.

TDCJ Corporation et al.,
Defendants.

ORDER

Plaintiff Barry Emmett, proceeding pro se, filed the above styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge K. Nicole Mitchell. Plaintiff filed a motion for leave to amend (Doc. 134) in which he asserts that “all claims are dropped except aluminum salt.” Doc. 134 at 1. He further states: “I’m requesting leave to amend [my] claim[s] to drop all other claims.”

The magistrate judge issued a report and recommendation (Doc. 149) construing plaintiff’s motion for leave to amend (Doc. 134) as a voluntary dismissal of all claims and defendants, except for plaintiff’s claim regarding aluminum salt, which was asserted against Texas Department of Criminal Justice (TDCJ) Executive Director Bryan Collier. No party has filed an answer or a motion for summary judgment.

The report recommends that TDCJ, the University of Texas Medical Branch (UTMB), UTMB-CMC Director Owen Murray, UTMB ADA Disability Director Cotton Armstrong, the Coffield Unit grievance investigators, the State of Texas, plaintiff’s Americans with Disabilities Act (ADA) claim, his medical deliberate indifference claims, and his conditions of confinement claims (with the exception of his aluminum salt claim) be voluntarily dismissed pursuant to Federal Rule of Civil Procedure 41(a)(1). Plaintiff did not object to the report and recommendation.

When no party objects to the magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). Finding no clear error, abuse of discretion, or legal conclusions contrary to law, the court accepts the report and recommendation (Doc. 149).

Plaintiff's motion (Doc. 134) is granted. For the reasons stated in the report, plaintiff's claims against TDCJ, UTMB, Murray, Armstrong, the Coffield Unit grievance investigators, and the State of Texas are voluntarily dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1). Likewise, plaintiff's ADA, medical deliberate indifference, and conditions of confinement claims, with the exception of the aluminum salt claim, are voluntarily dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1). The clerk of court is directed to terminate TDCJ, UTMB, Owen Murry, Cotton Armstrong, the Coffield Unit grievance investigators, and the State of Texas as defendants in this case.

So ordered by the court on September 5, 2023.

A handwritten signature in black ink, appearing to read "J. Campbell Barker", is written over a horizontal line.

J. CAMPBELL BARKER
United States District Judge